

AMENDED IN SENATE JUNE 18, 2003  
AMENDED IN ASSEMBLY APRIL 8, 2003  
AMENDED IN ASSEMBLY MARCH 25, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 572**

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**Introduced by Assembly Member Yee**

February 18, 2003

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An act to amend Sections 98.7, 6310, and 6312 of, *to add Section 6312.5 to*, and to repeal and add Section 6311 of, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 572, as amended, Yee. Employment.

Under existing law, it is unlawful to discriminate against an employee for filing a complaint as to an unlawful employment practice, and the Labor Commissioner is required to investigate complaints of unlawful employment practices.

This bill would provide standards and establish time limits for the Labor Commissioner's investigation and decision.

Under existing law, if an employer does not comply with an order of the Labor Commissioner, the Labor Commissioner is required to bring an action in court for relief.

This bill would further require the Labor Commissioner to petition the court for appropriate temporary relief unless good cause exists for not doing so.

Under existing law, if an employee is unlawfully required and refuses to perform unsafe work, the employee is entitled to reinstatement and reimbursement for lost wages.

This bill would also allow the employee to recover a penalty, as well as reasonable attorney's fees and costs.

Under existing law, an employer who refuses to comply with an order of the Labor Commissioner is guilty of a misdemeanor.

~~This bill would make the misdemeanor punishable by a fine or imprisonment, or both, and would also make it a misdemeanor for an employer to knowingly conceal an unsafe working condition, if an employee causes death or serious injury, thereby imposing a state-mandated local program it a misdemeanor to intentionally refuse to rehire, promote, or restore an employee determined to be eligible therefor, thereby imposing a state-mandated local program.~~

Under existing law, any employee who believes that he or she has been discharged or otherwise discriminated against may file a complaint with the Labor Commissioner.

The bill would ~~establish~~ *designate* within the Division of Labor Standards Enforcement a unit or personnel designated solely to handle matters related to the protection of employees' rights to secure, safe, and healthful working conditions, and to assure effective and enforceable rights in the event of reprisal for involvement with occupational health and safety issues. The division would be required annually to file a report with the Legislature setting forth certain statistical information relating to employee safety and health and information concerning employee grievances.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. It is the intent of the Legislature that employees
- 2 in this state have effective and enforceable rights to secure safe and
- 3 healthful working conditions, and to this end, be protected against



1 reprisals for complaints about hazardous conditions and refusals  
2 to work in hazardous conditions. The following enumeration of  
3 rights and remedies shall be available and rigorously enforced.

4 SEC. 2. Section 98.7 of the Labor Code is amended to read:

5 98.7. (a) Any person who believes that he or she has been  
6 discharged or otherwise discriminated against in violation of any  
7 law under the jurisdiction of the Labor Commissioner may file a  
8 complaint with the division within six months after the occurrence  
9 of the violation. The six-month period may be extended for good  
10 cause. The complaint shall be investigated by a discrimination  
11 complaint investigator in accordance with this section. The Labor  
12 Commissioner shall establish procedures for the investigation of  
13 discrimination complaints. A summary of the procedures shall be  
14 provided to each complainant and respondent at the time of initial  
15 contact. The Labor Commissioner shall inform complainants  
16 charging a violation of Section 6310 or 6311, at the time of initial  
17 contact, of his or her right to file a separate, concurrent complaint  
18 with the United States Department of Labor within 30 days after  
19 the occurrence of the violation.

20 (b) Each complaint of unlawful discharge or discrimination  
21 shall be assigned to a discrimination complaint investigator who  
22 shall prepare and submit a report to the Labor Commissioner based  
23 on an investigation of the complaint. The Labor Commissioner  
24 may designate the chief deputy or assistant Labor Commissioner  
25 or the chief counsel to receive and review the reports.

26 (1) The division shall commence an investigation within 10  
27 days of the date that a complaint is received by the division. The  
28 division shall provide written notice of the commencement of the  
29 investigation to the complainant and respondent upon  
30 commencing the investigation.

31 (A) The written notice of commencement shall inform the  
32 complainant and respondent of their rights and responsibilities and  
33 of all procedures involved in resolving the complaint.

34 (B) The written notice shall order that the respondent shall,  
35 without awaiting a discovery request, provide to the complainant  
36 and the division all of the following:

37 (i) The name, and, if known, the address and telephone number  
38 of each individual likely to have discoverable information that the  
39 respondent may use to support its defenses, unless solely for  
40 impeachment, identifying the subject of the information.

(ii) A copy, or a description by category and location, of all documents, data compilations, and tangible things that are in the possession, custody, or control of the respondent that the respondent may use to support its defenses, unless solely for impeachment.

(iii) The employee's personnel file.

(C) If the complaint does not provide enough information to commence an investigation, the division shall so notify the complainant of that fact within 10 days, and shall instruct the complainant regarding what additional specific information is needed to commence the investigation.

(2) The division shall issue subpoenas, upon showing of good cause, for additional evidence in any form or to compel testimony from a witness.

(3) The investigation shall be conducted by an inspector, investigator, or attorney designated by the division, who shall obtain and consider, at a minimum, the following information:

(A) Written statements and transcripts of oral statements submitted by the complainant in response to questioning by the division, which shall include all the elements of a prima facie case.

(B) Written statements submitted by the respondent.

(C) Written statements or transcripts of oral statements submitted by the complainant in response to questioning by the division, which shall include questioning the complainant regarding evidence that might tend to rebut statements offered by the respondent.

(D) Documents subpoenaed from the respondent or any other relevant source to support or rebut the evidence of the complainant or the respondent.

(E) Written statements or transcripts of oral statements given by witnesses who have information concerning the alleged violation. The identity of a witness shall remain confidential unless the identification of the witness becomes necessary to proceed with the investigation or to prosecute an action to enforce a determination.

(4) The person conducting the investigation shall, within 30 days of the date that a complaint for which an investigation was commenced is received by the division, file a written investigation report summarizing the findings of the investigation and all the information obtained pursuant to subparagraphs (1) to (3),

1 inclusive. The investigation report submitted to the Labor  
2 Commissioner or designee shall include the statements and  
3 documents obtained in the investigation, and the findings of the  
4 investigator concerning whether a violation occurred.

5 (5) The Labor Commissioner may hold an investigative  
6 hearing whenever the Labor Commissioner determines, after  
7 review of the investigation report, that a hearing is necessary to  
8 fully establish the facts. In the hearing the investigation report  
9 shall be made a part of the record and the complainant and  
10 respondent shall have the opportunity to present further evidence.  
11 If a hearing is conducted, the complainant and the respondent have  
12 the right to be present, to present evidence, and to present and  
13 cross-examine witnesses. The complainant and the respondent  
14 have the right to cross-examine witnesses presented by the  
15 division. The division may issue, serve, and enforce subpoenas on  
16 behalf of the division, the complainant, or the respondent to  
17 compel the attendance of witnesses at the hearing.

18 (6) The division shall issue a decision including findings of fact  
19 and conclusions of law within 50 days of the date that a complaint  
20 for which an investigation was commenced is received by the  
21 division.

22 (c) If the Labor Commissioner determines a violation has  
23 occurred, he or she shall notify the complainant and respondent of  
24 the decision within 10 days of the time the decision is issued and  
25 direct the respondent to cease and desist from the violation and  
26 take any action deemed necessary to remedy the violation,  
27 including, but not limited to, where appropriate, rehiring or  
28 reinstatement, reimbursement of lost wages and interest thereon,  
29 payment of reasonable attorney's fees associated with any hearing  
30 held by the Labor Commissioner in investigating the complaint,  
31 the posting of notices to employees, and specific penalties set forth  
32 in subdivision (b) of Section 6310 for matters charging a violation  
33 of Section 6310 or 6311.

34 (1) If the respondent does not comply with the order within 10  
35 working days following notification of the Labor Commissioner's  
36 determination, the Labor Commissioner shall bring an action  
37 promptly against the respondent in a court of competent  
38 jurisdiction. The Labor Commissioner shall petition the court for  
39 appropriate temporary relief or restraining order unless he or she  
40 determines good cause exists for not doing so.

1 (2) If the Labor Commissioner fails to bring an action in court  
2 promptly, the complainant may bring an action against the Labor  
3 Commissioner in any appropriate court for a writ of mandate to  
4 compel the Labor Commissioner to bring an action in court against  
5 the respondent. If the complainant prevails in his or her action for  
6 a writ, the court shall award the complainant court costs and  
7 reasonable attorney's fees, notwithstanding any other law.  
8 Regardless of any delay in bringing an action in court, the Labor  
9 Commissioner shall not be divested of jurisdiction. In any action,  
10 the court may permit the claimant to intervene as a party plaintiff  
11 to the action and shall have jurisdiction, for cause shown, to  
12 restrain the violation and to order all appropriate relief.  
13 Appropriate relief includes, but is not limited to, rehiring or  
14 reinstatement of the complainant, reimbursement of lost wages  
15 and interest thereon, specific penalties set forth in subdivision (b)  
16 of Section 6310 for matters charging a violation of Section 6310  
17 or 6311, and any other compensation or equitable relief as is  
18 appropriate under the circumstances of the case.

19 (d) (1) If the Labor Commissioner determines no violation has  
20 occurred, he or she shall notify the complainant and respondent of  
21 the decision within 10 days of the time the decision is issued and  
22 shall dismiss the complaint.

23 (2) The Labor Commissioner may direct the complainant to  
24 pay reasonable attorney's fees associated with any hearing held by  
25 the Labor Commissioner if the Labor Commissioner finds the  
26 complaint was frivolous, unreasonable, groundless, and was  
27 brought in bad faith.

28 (3) The complainant may, after notification of the Labor  
29 Commissioner's determination to dismiss a complaint, bring an  
30 action in an appropriate court, which shall have jurisdiction to  
31 determine whether a violation occurred, and if so, to restrain the  
32 violation and order all appropriate relief to remedy the violation.  
33 Appropriate relief includes, but is not limited to, rehiring or  
34 reinstatement of the complainant, reimbursement of lost wages  
35 and interest thereon, specific penalties set forth in subdivision (b)  
36 of Section 6310 for matters charging a violation of Section 6310  
37 or 6311, and other compensation or equitable relief as is  
38 appropriate under the circumstances of the case.

39 (4) When dismissing a complaint, the Labor Commissioner  
40 shall advise the complainant of his or her right to bring an action

1 in an appropriate court if he or she disagrees with the  
2 determination of the Labor Commissioner, and in the case of an  
3 alleged violation of Section 6310 or 6311, to file a complaint  
4 against the state program with the United States Department of  
5 Labor.

6 (5) The filing of a timely complaint against the state program  
7 with the United States Department of Labor shall stay the Labor  
8 Commissioner's dismissal of the division complaint until the  
9 United States Secretary of Labor makes a determination regarding  
10 the alleged violation. Within 15 days of receipt of that  
11 determination, the Labor Commissioner shall notify the parties  
12 whether he or she will reopen the complaint filed with the division  
13 or whether he or she will reaffirm the dismissal.

14 (e) The Labor Commissioner shall notify the complainant and  
15 respondent of his or her determination under subdivision (c) or  
16 paragraph (1) of subdivision (d), not later than 60 days after the  
17 filing of the complaint. Determinations by the Labor  
18 Commissioner under subdivision (c) or (d) may be appealed by the  
19 complainant or respondent to the Director of Industrial Relations  
20 within 10 days following notification of the Labor  
21 Commissioner's determination. The appeal shall set forth  
22 specifically and in full detail the grounds upon which the appealing  
23 party considers the Labor Commissioner's determination to be  
24 unjust or unlawful, and every issue to be considered by the  
25 director. The director may consider any issue relating to the initial  
26 determination and may modify, affirm, or reverse the Labor  
27 Commissioner's determination. The director's determination shall  
28 be the determination of the Labor Commissioner. The director  
29 shall notify the complainant and respondent of his or her  
30 determination within 10 days of receipt of the appeal.

31 (f) The rights and remedies provided by this section do not  
32 preclude an employee from pursuing any other rights and remedies  
33 under any other law.

34 SEC. 3. Section 6310 of the Labor Code is amended to read:  
35 6310. (a) It is an unlawful employment practice for an  
36 employer to subject an employee to an adverse employment action  
37 because any of the following has occurred:

38 (1) The employee filed, caused to be filed, or made known his  
39 or her intention to file, any oral or written complaint to the  
40 division, other governmental agencies having statutory



1 responsibility for or assisting the division with reference to  
2 employee safety or health, his or her employer or any agent of his  
3 or her employer, or his or her representative.

4 (2) The employee instituted or caused to be instituted any  
5 proceeding under or relating to his or her rights or has testified or  
6 is about to testify in the proceeding or because of the exercise by  
7 the employee on behalf of himself, herself, or others of any rights  
8 afforded him or her pursuant to Division 5 (commencing with  
9 Section 6300).

10 (3) The employee participated in an occupational health and  
11 safety committee.

12 (4) The employee refused to perform unsafe work *the*  
13 *performance of which violates any provision of this code,*  
14 *including Section 6400, any occupational safety or health*  
15 *standard, or any safety order of the Division of Labor Standards*  
16 *Enforcement or the Occupational Safety and Health Standards*  
17 *Board, as further defined in subdivision (d).*

18 (b) An employer who violates subdivision (a) is liable for the  
19 following:

20 (1) Twenty-five thousand dollars (\$25,000) or three times the  
21 value of the employee's lost benefits and wages, whichever is  
22 greater.

23 (2) Other pecuniary losses caused by the violation of  
24 subdivision (a).

25 (3) Reinstatement.

26 (4) Reasonable attorney's fees and costs.

27 (c) For purposes of this section, "adverse employment action"  
28 means a discharge, demotion, or suspension of an employee, or an  
29 action that threatens to discharge or in any other manner  
30 discriminates against an employee in a term or condition of  
31 employment.

32 (d) For purposes of this section, "refused to perform unsafe  
33 work" means a refusal to perform work under all of the following  
34 conditions:

35 (1) The employee complained in good faith about working  
36 conditions or practices which he or she reasonably believed to be  
37 unsafe or dangerous, created a real and apparent hazard, or was  
38 likely to cause death or serious physical harm to the employee, his  
39 or her fellow employees, or the employees of another employer.





(2) As soon as practicable, and immediately upon request, the employee reported his or her refusal and reasons to his or her immediate supervisor, foreperson, or any person in authority.

(3) The employee performed alternative work if requested by the employer.

SEC. 4. Section 6311 of the Labor Code is repealed.

SEC. 5. Section 6311 is added to the Labor Code, to read:

6311. (a) ~~An employer is guilty of a misdemeanor punishable by imprisonment in the county jail for a period not to exceed one year, or by a fine not to exceed one hundred thousand dollars (\$100,000), or both, but if the employer is a corporation or limited liability company, the fine may not exceed one million five hundred thousand dollars (\$1,500,000) if all of the following have occurred:~~

~~(1) An employer or an agent of the employer knew, through personal observation or by virtue of the fact, by means of either of the following:~~

~~(A) An employee refused to perform unsafe work.~~

~~(B) An employee, or his or her labor, legal, or medical representative, reported an unsafe working condition to the employer or an agent of the employer who has management control of the workplace.~~

~~(2) The employer concealed the unsafe working condition.~~

~~(3) The unsafe working condition was likely to cause death or serious physical harm.~~

~~(4) The unsafe working condition did cause death or serious physical harm to an employee.~~

~~(b) Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor punishable by imprisonment in the county jail for a period of not exceeding six months or by a fine not to exceed fifty thousand dollars (\$50,000), or both. If the employer is a corporation or limited liability company, the fine is not to exceed two hundred fifty thousand dollars (\$250,000).~~

~~(c) In determining the amount of the fine to impose under this section, the court shall consider all relevant circumstances, including, but not limited to, the nature, circumstances, extent, and gravity of the violation, any prior history of violations by the~~

1 employer, the ability of the employer to pay, and any other matter  
2 the court determines the interests of justice requires. Any employer  
3 who willfully refuses to rehire, promote, or otherwise restore an  
4 employee or former employee who had been determined to be  
5 eligible for rehiring or promotion or restoration by a grievance,  
6 procedure, arbitration, or hearing authorized by law, is guilty of  
7 a misdemeanor.

8 SEC. 6. Section 6312 of the Labor Code is amended to read:

9 6312. (a) Any employee who believes that he or she has been  
10 subjected to an adverse employment action by any person in  
11 violation of Section 6310 may file a complaint with the Labor  
12 Commissioner pursuant to Section 98.7.

13 ~~(b) In order to more effectively protect employees' rights to~~  
14 ~~secure, safe, and healthful working conditions, and to assure~~  
15 ~~effective and enforceable rights in the event of reprisal for~~  
16 ~~involvement with occupational health and safety issues, there shall~~  
17 ~~be established within the Division of Labor Standards~~  
18 ~~Enforcement a unit or personnel designated solely to handle~~  
19 ~~matters pursuant to Sections 6310 to 6312, inclusive.~~

20 ~~(c) The Division of Labor Standards Enforcement shall file an~~  
21 ~~annual report with the Legislature by December 1 of each year.~~  
22 ~~This report shall provide an accounting of all matters involving~~  
23 ~~Sections 6310 to 6312, inclusive, and shall report statistics so as~~  
24 ~~to coincide with the Federal Occupational Safety and Health~~  
25 ~~Administration fiscal year. The report shall include, but is not~~  
26 ~~limited to, information regarding cases filed, investigated,~~  
27 ~~dismissed, settled, heard, or appealed, the caseload of the Division~~  
28 ~~of Labor Standards Enforcement, the timeliness of dispositions,~~  
29 ~~and other information the Legislature may request in advance of~~  
30 ~~the report. The Legislature shall direct the division as to any~~  
31 ~~additional items to include in the report by October 1 of the year~~  
32 ~~the report is due. The Legislature may hold a hearing on the report~~  
33 ~~and obtain additional information after the report is submitted. It~~  
34 ~~is the intent of the Legislature that any costs to the Division of~~  
35 ~~Labor Standards Enforcement that may result from additional~~  
36 ~~caseloads due to the enactment of this statute shall be paid from~~  
37 ~~grants available under subdivision (g) of Section 672 of Title 29~~  
38 ~~of the United States Code.~~

39 SEC. 7. Section 6312.5 is added to the Labor Code, to read:

6312.5. (a) In order to more effectively protect employees' rights to secure, safe, and healthful working conditions, and to assure effective and enforceable rights in the event of reprisal for involvement with occupational health and safety issues, there shall be designated within the Division of Labor Standards Enforcement a unit or personnel designated solely to handle matters pursuant to Sections 6310 to 6312, inclusive.

(b) The Division of Labor Standards Enforcement shall file an annual report with the Legislature by December 1 of each year. This report shall provide an accounting of all matters involving Sections 6310 to 6312, inclusive, and shall report statistics so as to coincide with the Federal Occupational Safety and Health Administration fiscal year. The report shall include, but is not limited to, information regarding cases filed, investigated, dismissed, settled, heard, or appealed, the caseload of the Division of Labor Standards Enforcement, the timeliness of dispositions, and other information the Legislature may request in advance of the report. The Legislature shall direct the division as to any additional items to include in the report by October 1 of the year the report is due. The Legislature may hold a hearing on the report and obtain additional information after the report is submitted.

SEC. 8. It is the intent of the Legislature that any costs to the Division of Labor Standards Enforcement that may result from additional caseloads due to the enactment of this statute shall be paid from grants available under subdivision (g) of Section 672 of Title 29 of the United States Code.

~~SEC. 7.—~~

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.